

Message Text

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ACTION SCSE-00

INFO OCT-01 ISO-00 L-03 /004 W

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R 141458Z MAY 76

FM AMEMBASSY LISBON

TO SECSTATE WASHDC 7112

UNCLAS LISBON 3210

E.O. 11652: N/A

TAGS: CPRS PO (RITT, SARA CUTLER)

SUBJ: LUGGAGE LEFT IN EMBASSY

REF: STATE 112826

1. EMBASSY DOES NOT HAVE A COPY OF PORTUGUESE CIVIL CODE OR FUNDS TO ENGAGE OUTSIDE LEGAL COUNSEL, SO THE OPINIONS EXPRESSED BELOW SHOULD BE CHECKED WITH HISPANIC LAW SECTION OF LIBRARY OF CONGRESS BEFORE BEING ACTED ON.

2. OUR COCKTAIL PARTY RESEARCH LEADS US TO BELIEVE THAT BAILMENTS, KNOWN AS DEPOSITOS, ARE CONTROLLED BY SECTIONS 1185.3 AND 1201 OF PORTUGUESE CIVIL CODE. THESE PROVISIONS HOLD THAT BAILMENT FOR BENEFIT OF BAILOR (GRATUITOUS BAILMENT) CAN BE TERMINATED BY BAILEE AT ANY TIME ON GIVING ADEQUATE NOTICE.

ARTICLE 1024 OF CIVIL CODE OF PROCEDURES, HOWEVER, PROVIDES THAT WHEN DEBTOR, AND BAILEE IS CONSIDERED DEBTOR IN THESE MATTERS, WANTS TO DISCHARGE HIS DEBT AND CREDITOR (BAILOR) WILL NOT ACCEPT PAYMENT, THE PAYMENT (GOODS) MUST BE DEPOSITED WITH SPECIFIED JUDICIAL AUTHORITY.

3. THIS WOULD SEEM TO REQUIRE THAT WE TURN OVER BAGGAGE TO THE COURTS. A REVIEW OF THE FILE ON THIS CASE WILL DISCLOSE THAT THE ISSUE THAT HAS MADE THIS CASE SO COMPLICATED IN THE PAST IS THE VERY RELUCTANCE OF THE PORTUGUESE AUTHORITIES TO ASSUME JURISDICTION OVER THE MATTER. IF COURTS WOULD NOT DO SO WHEN THE DISPUTE WAS BETWEEN AN AMERICAN AND VARIOUS PORTUGUESE PEOPLE AND FIRMS, CERTAINLY THEY WILL NOT DO SO WHEN THE DISPUTE IS BETWEEN THE AMERICAN AND HER OWN EMBASSY. IN THE END,

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DO WE REALLY WANT THE PORTUGUESE COURTS TO INTERVENE?

IT IS THIS VERY RELUCTANCE TO ASSERT JURISDICTION OVER FOREIGNERS
THAT IS SO USEFUL IN NORMAL ARREST CASES.

4. DISCUSSING THE CASE WITH THE POST HISTORIANS, IT APPEARS
THAT A FORMER CONSUL, WHO KNEW THE REGULATIONS PERFECTLY
WELL, ACCEPTED MRS. RITT'S BAGGAGE AT THE INSISTENCE OF THE
CURRENT DCM OR AMBASSADOR. IN ANY EVENT, WHETHER HE WAS ACTING
WITHIN THE REGULATIONS OR NOT, HE WAS ACTING IN A MINISTERIAL
CAPACITY SO THAT THE MATTER IS OUTSIDE THE JURISDICTION OF
PORTUGUESE LAW, BUT WE WILL LEAVE THAT TO L TO DECIDE.
IT IS OUR VIEW, HOWEVER, THAT THE PORTUGUESE LAW DOES NOT APPLY,
IS NOT CLEAR, AND SHOULD BE LEFT OUT OF THE MATTER.

5. OUR NEGATIVE COMMENTS ON THIS ISSUE NOTWITHSTANDING,
WE ARE GRATIFIED TO LEARN THAT L HAS BEEN BROUGHT IN.
THIS IS AN EXTERMELY TOUCH CASE. IT ALSO APPEARS TO US A GOOD
IDEA THAT THE NEXT LETTER COME FROM THE DEPARTMENT SO THAT IT
WILL NOT APPEAR THAT THIS IS SOLELY THE EMBASSY'S IDEA.
FROM HERE ON, WE WILL ACT ONLY AFTER RECEIVING THE DEPARTMENT
INSTRUCTIONS.

6. ONE POINT WORTH NOTING, HOWEVER, IS THAT MRS. RITT OFTEN
PLEADS POVERTY IN THESE MATTERS. THAT IS NOT THE CASE; SHE
HAS SUFFICIENT MONEY. SHE MUST, HOWEVER, BE VIEWED AS BEING VERY
SICK, AND THE MANIFESTATIONS OF HER ILLNESS COME OUT IN THE
MOST VINDICTIVE WAYS.
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